**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**COMPANY APPLICATION No. 426 of 2000**
**WITH**
**COMPANY APPLICATION No. 2 of 1996**
**IN**
**COMPANY PETITION No. 118 of 1999**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE M.R. SHAH**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**O L OF RUBY BEARINGS PVT LTD - Applicant(s)**
**Versus**
**CHHAGANBHAI KHODABHAI DHAMI & 8 - Respondent(s)**

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**Appearance :**

MR RM DESAI for Applicant(s) : 1,
MR AMAR N BHATT for Respondent(s) : 1 - 2, 5,
MR SK VORA for Respondent(s) : 2,
DELETED for Respondent(s) : 3,
NOTICE SERVED for Respondent(s) : 4,
MR RAMESH K SHAH for Respondent(s) : 6,
MR HARMISH K SHAH for Respondent(s) : 7 - 9.

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**CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**

**Date : 06/03/2007**

**ORAL JUDGMENT**

Company Application No. 426 of 2000 has been filed by the applicant, Official Liquidator being Liquidator of Ruby Bearings Pvt.Ltd., against the respondents, ex-Directors of the company [in liqn.] for the following reliefs;

A. Declare that Respondents-Accused, who were Directors of Ruby Bearings Private Ltd, has misapplied, retained or misused for their own personal purpose and benefit and became liable and accountable for the money or property of the Company;

B. For a declaration that Respondents/Accused, who were Directors of Ruby Bearing Private Ltd., were and are guilty of misfeasance, breach of trust, breach of duty and gross negligence in discharging their duties, as Directors of the Company and managing the affairs of the company in a negligent manner;

C. And for an order that all necessary enquiry be made and Accounts be taken for ascertainment of the sum that the

Respondents/Accused are liable to contribute to the assets of the Company in Liquidation by way of compensation for such misfeasance and breach of trust;

D. Order that Respondents/Accused jointly and severally contribute to the assets of the Company in Liquidation and to pay to the Official Liquidator of the Company in Liquidation all such sum that may be found liable to be contributed in view of the misfeasance, breach of trust, breach of duty and gross negligence committed by the Respondents/Accused together with interest on the said amount at the rate of 18% per annum or as may be directed by the Hon'ble Court from such date as the Hon'ble Court may direct till payment or realisation;

E. For an order that the Respondents/Accused do pay the costs, charges and expenses incurred by the Liquidator by way of fees of Chartered Accountant and the fees of the Legal Adviser, as may be deemed fit by the Hon'ble Court.

F. For such further and other reliefs and directions as the Hon'ble Court, in the facts and circumstances of the case may deem fit.”

and for initiating appropriate proceedings under Section 543 of the Companies Act, 1956 [hereinafter referred to as 'the Act'].

2. Company Application No. 2 of 1996 has been filed by the applicant, Official Liquidator by taking Judge's Summons under Section 543(1) of the Act with the following prayers;

a) For a declaration that the opponents/accused Directors of the above Company had misapplied, retained and became liable and accountable for the money or property of the Company;

and

b) For declaration that the opponent -Directors of the above company were guilty of misfeasance, breach of trust, breach of duty, gross negligence in discharging their duties and managing of affairs of the company;

and

c) For an order that all necessary enquiries be made and accounts taken for ascertaining what sums the respondents are liable to contribute to assets of the

said Company by way of compensation for such misfeasance and breach of trust as aforesaid;

and

d) For an order that the respondents do justify and severally contribute to the assets of the said company and do pay to the Official Liquidator of the said applicant Company all such sums they may be found liable to contribute to such assets with interest on such sums at the rate of 18% per annum or as may be fixed by this Hon'ble Court as from several dates when the said sums respectively wrongfully paid away until the date of payment;"

3. Shri RM Desai, learned advocate appearing for the Official Liquidator has submitted that pursuant to the order passed by the learned Single Judge in Company Application No. 2 of 1996, Chartered Accountant was appointed and on the bais of the report submitted by the Chartered Accountant fresh Judge's Summons has been taken out by way of Company Application No. 426 of 2000 for taking appropriate steps against the ex-Directors of the company [in liqn.] for the misfeasance committed by them.

4. Shri Amar Bhatt, learned advocate has appeared on behalf of respondents No. 1, 2 and 5

and Shri Harmish Shah, learned advocate appears on behalf of respondents No. 7, 8 and 9. Affidavit-in-Reply is filed on behalf of respondents No. 1, 2 and 5. A preliminary objection has been raised with regard to maintainability of the present application under Section 543 of the Act submitting that the present application for initiating appropriate proceedings under Section 543 of the Act is barred by limitation. It has been submitted that the order of winding up of the company [in liqn.] Ruby Bearings Pvt.Ltd., was passed on 8.2.1988, and the Official Liquidator was appointed, and the present Company Application under Section 543(1) of the Act has been filed in 2000, i.e., after a period of 12 years. Shri Harmish Shah, learned advocate appearing on behalf of the respondents No. 7, 8 and 9 has also adopted the submissions made by Shri Amar Bhatt with regard to bar of limitation.

5. It is not in dispute that Ruby Bearings Pvt.Ltd., the company [in liqn.] was ordered to be wound up by order dated 8.2.1988 and the

company application under Section 543 of the Act has been filed only on 16th November 2000 i.e., after a period of almost more than 12 years. Section 543 of the Act reads as under;

***"Power of Tribunal to assess damages against delinquent directors etc.***

***543(1) If in the course of winding up of a company, it appears that any person who has taken part in the promotion or formation of the company, or any past or present director, manager, liquidator or officer of the company___***

***(a) has misapplied, or retained, or become liable or accountable for, any money or property of the company; or***

***(b) has been guilty of any misfeasance or breach of trust in relation to the company,***

***the Tribunal may, on the application of the Official Liquidator, or the liquidator or of any creditor or contributory, made within the time specified in that behalf in sub-section (2), examine into the conduct of the person, director, manager, liquidator or officer aforesaid, and compel him to repay or restore the money or property or any part thereof respectively, with interest as such rate as the Tribunal thinks just, or to***

***contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust, as the Tribunal thinks just.***

***(2) An application under sub-section (1) shall be made within five years from the date of the order for winding up, or of the first appointment of the liquidator in the winding up, or of the misapplication, retainer, misfeasance or breach of trust as the case may be, whichever is longer.***

***(3) This section shall apply notwithstanding that the matter is one for which the person concerned may be criminally liable."***

On perusal of the provisions of Section 543(2) of the Companies Act, 1956 it is clear that an application under sub-section (1) of Section 543 shall be made within 5 years from the date of order of winding up. Even if the benefit of one year provided under Section 458-A of the Act has been granted in favour of the Official Liquidator, in that case also the application would be time barred. Prior to the year 2000 there was no application under Section 543 of the Act and the only prayer made in Company

Application No. 2 of 1996 was for permitting the Official Liquidator to appoint a Chartered Accountant for the purpose of verification of the accounts which cannot be said to be an application under Section 543 of the Act. Under the circumstances when the application itself is time barred while considering the provisions of Section 543(2) of the Act, this Court is not required to consider anything further on merits. Hence, without observing anything on merits about the allegations this application requires to be dismissed as having become time barred. Shri RM Desai, learned advocate appearing for the Official Liquidator has failed to satisfy this Court that the present application is within the prescribed time limit as provided in Section 543 of the Act. Accordingly, without observing anything on merits, the present Company Application No. 426 of 2000 is dismissed as the same is barred by limitation.

6. So far as Company Application No. 2 of 1996 is concerned, in view of the earlier order

passed by this Court permitting the Official Liquidator to appoint a Chartered Accountant and by and large all the prayers are granted, and in view of the dismissal of Company Application No 426 of 2000, this application is disposed of.

[ M.R. Shah, J. ]

rmr.